similar to that in which a Court acts, the statement was not absolutely privileged. He did not cite any English decided case showing that damages had been awarded for defamation in respect of a statement made in a police investigation.

By sections 111 and 112 of the Criminal Procedure Code, when a police officer makes an investigation :—

(1) he may require any person to attend before him;

(2) if such person does not so attend a warrant may be issued to enforce his attendance;

(3) the police officer may interrogate such person on attendance; and

(4) such person is bound to answer truly all questions put to him by the police officer making the investigation.

In India, where the law relating to a police investigation is similar to the local law, it was decided in *Methuram Dass v. Jaggannath Dass*[3] that a statement made in the course of a police investigation was absolutely privileged. The reasoning in the judgment in that case is :—

> "In the present case the investigation was required by law; it was conducted under the provisions required by the law, it was ancillary to the administration of justice. The defendant was bound by law to answer all questions put to him by the police officer conducting the investigation and was punishable if he answered untruly and what was said by him had reference to the matter under investigation. Virtually the only distinction between his position and that of an ordinary witness arises from the fact that his statement was not made in a Court of Justice, and we see no reason accordingly, to use the language of the Lord Chief Baron cited above" — that was in the case of **Dawkins v. Lord Rokeby**[4] — "why public policy should not equally prevent an action being brought against him as against a witness in an ordinary Court of Justice."

I agree with that decision and the reasoning for it.

The question was raised by the Court whether the provisions of section 113 of the Criminal Procedure Code prevent a statement made under section 112 from being given in evidence at all, even in civil proceedings, but having decided that statements made under section 112 are absolutely privileged it is not necessary for me to decide this further question. Nor, having found that the statement in this case was made under section 112 is it necessary to decide whether information to the police under section 107 is, or is not, absolutely privileged.

For the above reasons, without calling on Mr. Hastings, for the respondent, I agreed with the other members of the Court in dismissing this appeal with costs, such costs to include the costs of the adjournment of the appeal from the 6th of April 1949 to the 15th June 1949.

Pretheroe, J. : — I agree and have nothing to add.

Spenser-Wilkinson, J. : — I agree.

Appeal Dismissed.

TAN GEOK KWANG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J., Spenser-Wilkinson and Russell, JJ.) July 16, 1949]

[F.M. — Criminal Appeal No. 65 of 1949]

Emergency Regulations 1948, Regulation 4(1)(a) — Possession of revolver — Admissibility of evidence — Evidence tending to show accused was guilty of another offence — Evidence of bad character.

In this case the appellant was charged with being in possession of a revolver. At the trial evidence was led (1) to show that a hand-grenade had been thrown from a blukar into which the appellant had run and in which no other person was found by the Police, (2) to show that the revolver found had been fired a few days previously at Sungei Bakap and (3) to show the contents of documents found in the possession of the appellant.

Held, (1) that the evidence relating to the throwing of the hand-grenade was admissible under Section 6 of the Evidence Enactment as res gestae because the group of facts forming this transaction was so connected that the exclusion of evidence relating to the hand-grenade would tend to render evidence as to other facts unintelligible; (2) that the evidence as to the firing of the revolver a few days previously should have been excluded as it tended to show that the appellant was guilty of another offence, namely the possession or the carrying and using of the same revolver three days previously; (3) that the contents of the documents should not have been admitted in evidence as it tended to show that the appellant was a man of bad character and also showed that he had been guilty of other criminal offences not contained in the charge; (4) that for these reasons the conviction must be quashed and a retrial ordered.

Cases referred to :—

(1) *Chong Kim Seng v. Public Prosecutor* (1949) 15 M.L.J. 109.

(2) *Noor Mohamed v. Rex* (1949) 1 A.E.R. 365.

(3) *Makin v. A. G. for New South Wales* (1894) A.C. 57.

(4) *Thompson v. Rex* (1918) A.C. 221.

CRIMINAL APPEAL.

K. C. Chia for the Appellant.

N. L. Cohen for the Respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. : — In this case the appellant was charged in Penang with being in possession of a .38

revolver in Province Wellesley on the 13th of March, 1949, an offence contrary to Regulation 4(1)(a) of the Emergency Regulations, 1948. By a majority of 5 to 2 the jury returned a verdict of guilty, with which the trial Judge concurred. Accordingly the appellant was convicted and sentenced to death.

The facts are that a police party, acting on information received, went to a squatter area, arriving there between 7.30 p.m. and 8 p.m. on the 13th March, 1949. It was a moonlight night. When the police party was about 20 yards from a house in that squatter area a Chinese ran out of the house. He refused to obey the police warning to stop and was fired on with a revolver by the leader of the police party. This Chinese was wounded, as evidenced by his cry of pain. He disappeared into the nearby blukar. Whilst the members of the police party were surrounding this blukar, a hand-grenade, which did not explode, was thrown at them from the blukar. Evidence was given by the police that the blukar was surrounded and no one was seen to enter or leave it. The police party then conducted a search and found the appellant lying wounded in a ditch inside the blukar. He was arrested. At the time of his arrest nothing incriminating was found on his person nor at the place where he had been found lying wounded in the ditch.

The police party then left the area, taking with them the appellant.

About 9.30 p.m. the same night the police returned and made a further search of the ditch where the appellant had been found. It was still moonlight. There, according to the police evidence, that is in the same place where they had found the appellant lying wounded, they found the revolver the subject matter of the charge and also a bundle of documents wrapped up in silver paper. The revolver and the bundle of documents were stained with blood, and those blood-stains were proved to belong to the same group as that to which the blood of the appellant belongs.

At the trial the appellant denied he was in possession of the revolver and also denied that he had thrown the hand-grenade. He admitted possession of the documents, but denied that he had any knowledge of their contents. He said they had been handed to him by a Chinese for delivery to another Chinese. The documents themselves, and translations of their contents, were admitted in evidence at the trial.

Also admitted at the trial was evidence that the revolver was the same revolver which had been fired, sometime previously at Sungei Bakap, Province Wellesley.

The main argument of Mr. Chia, for the appellant, was that the minds of the jury had been prejudiced by the wrongful admission of evidence relating to:—

(a) the throwing of the hand-grenade;

(b) the firing of the revolver, the subject matter of the charge, a few days previously at Sungei Bakap;

(c) the contents of the documents found in the possession of the appellant.

As regards (a), Mr. Chia relied on a decision of this Court in *Chong Kim Seng v. Public Prosecutor*[1]. The facts in that case are entirely different from those in the present case.

In that case there was no evidence to connect the accused with the revolver, hand-grenade and ammunition found on a table in the house. The accused was arrested at the entrance of the house carrying a bag of ammunition; the prosecution evidence further showed that another man was in the house at that time. In the present case one Chinese ran wounded into a patch of blukar, and whilst the party of police were surrounding the blukar the hand-grenade was thrown at them. The blukar was then surrounded and searched, and the appellant alone was found, lying wounded therein. No other person was seen to enter or leave the blukar, and the appellant in his own evidence admitted he saw no one else in that blukar at that time. There is therefore a direct connection between the wounded Chinese who entered the blukar, the throwing of the hand-grenade and the arrest of the wounded appellant in the blukar. The evidence relating to the throwing of the hand-grenade is therefore admissible under section 6 of the Evidence Enactment as part of the *res gestae*, because the group of facts forming this transaction was so connected that the exclusion of evidence relating to the hand-grenade would tend to render evidence as to other facts unintelligible.

As regards (b), the police evidence was to the effect that on the night of the 10th/11th March, 1949, i.e. three days before the appellant was arrested and charged with the possession of this revolver, three bullets, one of which had been fired from the same revolver, were found by the Officer-in-Charge, Police District, Nibong Tebal, in or near the door of a cinema at Sungei Bakap, only four miles from the place where the appellant was arrested on the 13th March, 1949.

Asked why the prosecution had led this evidence Mr. Cohen, for the Public Prosecutor, replied that this evidence showed that the revolver had been in that area shortly before the appellant had been arrested, and this showed that the appellant would have had an opportunity to possess it.

We are unable to agree this is a sufficient reason for the admission of that evidence. It may be that evidence that this particular revolver was in that area shortly before the arrest of the appellant was admissible, but its evidential value was negligible as many persons in that area at that time may have had a similar opportunity to possess it. There can be no question that this evidence was highly prejudicial to the appellant as tending to show that he was guilty of another offence, namely, the possession, or the carrying and using, of this same revolver 3 days previously.

In the case of *Noor Mohamed v. Rex*[2], Their Lordships of the Privy Council said, (at page 370):—

> It is right to add, however, that in all such cases the Judge ought to consider whether the evidence which it is proposed to adduce is sufficiently substantial, having regard to the purpose to which it is professedly directed, to make it desirable in the interest of justice that it should be admitted. If, so far as that purpose is concerned, it can in the circumstances of the case have only trifling weight, the Judge will be right to exclude it. To say this is not to confuse weight with admissibility. The distinction is plain, but cases must occur in which it would be unjust to admit evidence of a character gravely prejudicial to the accused even though there may be some tenuous ground for holding it technically admissible. The decision must then be left to the discretion and the sense of fairness of the Judge.

We are of the opinion that the learned Judge in the exercise of his discretion should have rejected this evidence in view of its trifling weight and its gravely prejudicial character.

As regards (c), the prosecution were entitled to prove that the blood-stained bundle of documents was found at the spot, and the bundle itself was properly admitted as an exhibit. We were of the opinion, however, that the contents of the documents should not have been before the jury. As stated by the learned Judge in his summing up, they obviously related to the intelligence system and finance of a body of bandits, and therefore, in our opinion, tended to show not only that the appellant was a man of bad character but also that he had been guilty of other criminal offences not contained in the present charge. At the very least they tended to show that the accused was a person who consorted with persons whom he knew or had reasonable grounds for believing intended to act or had recently acted in a manner prejudicial to public safety.

In *Makin v. A. G. for New South Wales*[3], Their Lordships of the Privy Council laid down the following two principles (at page 65):—

> (1) It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried; and
>
> (2) .....the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged were designed or accidental, or to rebut a defence which would otherwise be open to the accused.

The contents of these documents were not relevant to any issue which the jury had to try because no defence was thereby rebutted nor could the question of design or accident arise.

In the case of *Thompson v. Rex*[4] which is a decision of the House of Lords, Lord Sumner said (at page 232):—

> No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of a man who would commit a crime, or that he is generally disposed to crime and even to a particular crime.

The decision in that case was cited with approval by Their Lordships of the Privy Council in the case of *Noor Mohamed v. Rex supra.*

It appears to us that the contents of the documents were put before the jury with the intention of leading them to believe that the accused was the kind of man who would be likely to have had possession of a revolver, and therefore were wrongly admitted in evidence.

Mr. Cohen, himself, agreed that the contents of the documents were inadmissible, but sought to invoke the aid of the proviso to section 29(1) of the Courts Ordinance, 1948. If this evidence and the evidence as to the firing of the revolver at Sungei Bakap a few days previously had not been before the jury, it may well have been that some of them would have come to a different conclusion regarding the guilt of the appellant.

For these reasons we allowed the appeal and quashed the conviction and sentence. We ordered a re-trial and directed that the appellant be remanded in custody pending the re-trial.

Re-trial Ordered.